

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEORGE E. THOMAS,

Plaintiff,

v.

CITY OF COLVILLE, a Municipal
Corporation, COLVILLE CITY
POLICE DEPARTMENT; REX
NEWPORT, and JANE DOE,

Defendants.

NO: 13-CV-0120-TOR

PROTECTIVE ORDER

BEFORE THE COURT is a Stipulated Protective Order (ECF No. 17),
which the parties have petitioned the Court to enter. Pursuant to the parties'
stipulation, **IT IS HEREBY ORDERED:**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential,
proprietary, or private information for which special protection may be warranted.
Accordingly, the parties hereby stipulate to and petition the Court to enter the

1 following Stipulated Protective Order. The parties acknowledge that this agreement
2 is consistent with Fed. R. Civ. P. 26(c). It does not confer blanket protection on all
3 disclosure or responses to discovery, the protection it affords from public disclosure
4 and use extends only to the limited information or items that are entitled to
5 confidential treatment under the applicable legal principles, and it does not
6 presumptively entitle parties to file confidential information under seal.

7 2. “CONFIDENTIAL” MATERIAL

8 “Confidential” material shall include the following documents and tangible
9 things produced or otherwise exchanged: *Colville City Police Department Personnel*
10 *File for Officer Rex Newport; Colville City Police Department training records;*
11 *other private data of Colville City police officers; plaintiffs’ medical records;*
12 *financial records; and other sensitive materials of a private, non-public nature that*
13 *may be produced in discovery.* These documents contain private and confidential
14 information and sensitive law enforcement information that is not otherwise available
15 to the public, the disclosure of which would hamper effective law enforcement.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by

1 parties or their counsel that might reveal confidential material. However, the
2 protections conferred by this agreement do not cover information that is in the public
3 domain or becomes part of the public domain through trial or otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material
6 that is disclosed or produced by another party or by a non-party in connection with
7 this case only for prosecuting, defending, or attempting to settle this litigation.
8 Confidential material may be disclosed only to the categories of persons and under
9 the conditions described in this agreement. Confidential material must be stored and
10 maintained by a receiving party at a location and in a secure manner that ensures that
11 access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the designating party, a
14 receiving party may disclose any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the information
17 for this litigation;

18 (b) the officers, directors, and employees (including in house counsel) of
19 the receiving party to whom disclosure is reasonably necessary for this litigation,
20 unless the parties agree that a particular document or material produced is for

1 Attorney's Eyes Only and is so designated;

2 (c) experts and consultants to whom disclosure is reasonably necessary for
3 this litigation and who have signed the "Acknowledgement and Agreement to Be
4 Bound" (Exhibit A);

5 (d) the Court, Counsel personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the
7 supplication of confidential material, provided that counsel for the party retaining the
8 copy or imaging service instructs the service not to disclose any confidential material
9 to third parties and to immediately return all originals and copies of any confidential
10 material;

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to
13 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered
14 by the Court. Pages of transcribed depositions testimony or exhibits to depositions
15 that reveal confidential material must be separately bound by the court reporter and
16 may not be disclosed to anyone except as permitted under this agreement;

17 (g) the author or recipient of a document containing the information to a
18 custodian or other person who otherwise possessed or knew the information.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection. Each party or non-party that designates information or items for
4 protection under this agreement must take care to limit any such designation to
5 specific material that qualifies under the appropriate standards. The designating
6 party must designate for protection only those parts of material, documents, items,
7 oral or written communications that qualify, so that other portions of the material,
8 documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or delay the case development process or to
13 impose unnecessary expenses and burdens on other parties) expose the designating
14 party to sanctions.

15 If it comes to a designating party's attention that information or items that it
16 designated for protection do not qualify for protection, the designating party must
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise
19 provided in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
20 otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protection under this agreement must be clearly so designated before or when the
2 material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and proceedings), the designating party must affix the word
5 “CONFIDENTIAL” to each page that contains confidential material. If only a
6 portion or portions of the material on a page qualifies for protection, the producing
7 party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins).

9 (b) Testimony given in deposition or in other pretrial or trial
10 proceedings: the parties must identify on the record, during the deposition, hearing,
11 or other proceeding, all protected testimony, without prejudice to their right to so
12 designate other testimony after reviewing the transcript. Any party or non-party may,
13 within fifteen days after receiving a deposition transcript, designate portions of the
14 transcript, or exhibits thereto, as confidential.

15 (c) Other tangible items: the producing party must affix in a
16 prominent place on the exterior of the container or containers in which the
17 information or items is stored, the word “CONFIDENTIAL.” If only a portion or
18 portions of the information or item warrant protection, the producing party, to the
19 extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failure to Designate. If timely corrected, an
2 inadvertent failure to designate qualified information or items does not, standing
3 alone, waive the designating party's right to secure protection under this agreement
4 for such material. Upon timely correction of a designation, the receiving party must
5 make reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to
16 resolve any dispute regarding confidential designations without Court involvement.
17 Any motion regarding confidential designations or for a protective order must
18 include a certification, in the motion or in a declaration or affidavit that the movant
19 has engaged in a good faith meet and confer conference with other affected parties in
20 an effort to resolve the dispute without Court action. The certification must list the

1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge
4 without Court intervention, the designating party may file and serve a motion to
5 retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil
6 rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the
7 designating party. Frivolous challenges, and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the challenging party to sanctions. All parties shall continue to maintain the
10 material in question as confidential until the Court rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION.

13 If a party is served with a subpoena or a Court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a
17 copy of the subpoena or Court order;

18 (b) promptly notify in writing the party who caused the subpoena or
19 order to issue in the other litigation that some or all of the material covered by the
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1 subpoena or order is subject to this agreement. Such notification shall include a copy
2 of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
7 confidential material to any person or in any circumstance not authorized under this
8 agreement, the receiving party must immediately

9 (a) notify in writing the designating party of the unauthorized
10 disclosures,

11 (b) use its best efforts to retrieve all unauthorized copies of the
12 protected material,

13 (c) inform the person or persons to whom unauthorized disclosures
14 were made of all the terms of this agreement, and

15 (d) request that such person or persons execute the
16 “Acknowledgement and Agreement to Be Bound” that is attached hereto as Exhibit
17 A.

18 9. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL.

20 When a producing party gives notice to receiving parties that certain

1 inadvertently produced material is subject to a claim of privilege or other protection,
2 the obligations of the receiving parties are those set forth in Federal Rule of Civil
3 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
4 may be established in an e-discovery order or agreement that provides for production
5 without prior privilege review. Parties shall confer on an appropriate non-waiver
6 order under Fed.R.Evid. 502.

7 **10. NONTERMINATION AND RETURN OF DOCUMENT**

8 Within 60 days after termination of this action, including all appeals, each
9 receiving party must return all confidential material to the producing party, including
10 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
11 appropriate methods of destruction.

12 Notwithstanding this provision, counsel are entitled to retain one archival copy
13 of all documents filed with the Court, trial, deposition and hearing transcripts,
14 correspondence, deposition and trial exhibits, expert reports, attorney work product,
15 and consultant and expert work product, even if such materials contain confidential
16 material.

17 The confidentiality obligations imposed by this agreement shall remain in
18 effect until a designating party agrees otherwise in writing or a Court orders
19 otherwise.

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1 **IT IS SO ORDERED:**

2 The District Court Executive is hereby directed to enter this Order and
3 provide copies to counsel.

4 **DATED** November 13, 2013.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Washington on _____ in the case of *Thomas v. City of Colville, et al., U.S. District Court (E.D. Wash.) No. CV-13-120-TOR*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____